

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD STEPHENS,

Defendant-Appellant.

UNPUBLISHED
October 12, 1999

No. 205533
Detroit Recorder's Court
LC No. 96-009541

Before: Gribbs, P.J., and O'Connell and R.B. Burns,* JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, and felony-firearm, MCL 750.227b; MSA 28.414(2). He was sentenced to a term of twenty to forty years for the murder conviction and to a consecutive two-year term for felony-firearm. We affirm.

Defendant argues on appeal that there was insufficient evidence to support his conviction and that the trial court should have granted his motion for a directed verdict. There is no merit to this issue. It is undisputed that defendant shot the decedent. Viewed in the light most favorable to the prosecution, the evidence was sufficient to disprove defendant's claim of self-defense beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). Generally, a defendant must retreat if retreat is safely possible, and the failure to retreat is a factor in determining whether a defendant's use of deadly force was necessary. *People v Crow*, 128 Mich App 477, 489; 340 NW2d 838 (1983); CJI2d 7.16. Although there are exceptions to the duty to retreat, there is no general exception applicable to a defendant's automobile. *Crow, supra* at 487. Here, viewing the evidence in the light most favorable to the prosecution, although decedent indicated that he wanted to fight defendant, defendant was protected inside his car and had the ability to safely leave the area. A rational trier of fact could conclude that the threat

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

posed by decedent was not such as to cause a reasonable person to lose control. The evidence was sufficient to support defendant's second-degree murder conviction and the trial court did not err in denying defendant's motion for directed verdict.

Affirmed.

/s/ Roman S. Gibbs

/s/ Peter D. O'Connell

/s/ Robert B. Burns